

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Applications of) FCC File Nos.
ALLTEL COMMUNICATIONS OF THE)
SOUTHWEST) 0000959430
COMMNET CAPITAL, LLC) 0000922001
MCELROY ELECTRONICS CORPORATION) 0000913369; 0000959846
SMITH BAGLEY, INC.) 0000960815
WWC LICENSE L.L.C.) 0000959496; 0000959387
For Authority To Operate a Cellular System in)
New Mexico 3 RSA, Market 555A)
and)
ALEE CELLULAR COMMUNICATIONS)
Cellular Radiotelephone Station KNKN271)

ORDER

Adopted: May 10, 2004

Released: May 11, 2004

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. On August 6, 2002, Alee Cellular Communications (Alee) filed a Request for Stay¹ of further processing of the above-captioned applications of Alltel Communications of the Southwest, Commnet Capital, L.L.C., McElroy Electronics Corporation, Smith Bagley, Inc., and WWC License L.L.C. These applications seek authority to operate a new cellular system in the New Mexico 3 RSA, Market 555A, which became available subsequent to the revocation of Alee’s license for that market.²

¹ Request for Stay, File Nos. 0000959430, 0000922001, 0000913369, 0000959846, 0000960815, 0000959496, and 0000959387, filed by Alee Cellular Communications (Aug. 6, 2002) (2002 Stay Request).

² Alee’s license for New Mexico RSA was revoked by the Commission on June 3, 1997. ALGREG Cellular Engineering, Memorandum Opinion and Order, 12 FCC Rcd 8148, 8172-8181 (1997), pet. for recon. denied, Memorandum Opinion and Order and Order on Reconsideration, 14 FCC Rcd 18524, 18533-35 (1999), aff’d, Alee Cellular Communications v. FCC, No. 99-1460 (D.C. Cir. Jan. 30, 2001), reh’g denied (D.C. Cir. Apr. 5, 2001), cert. denied (S.Ct. Oct. 9, 2001). Specifically, the Commission held that Alee made false statements to the Commission, lacked the candor required of licensees, and accordingly was not qualified to hold a cellular license for the New Mexico 3 RSA. Id. The former Commercial Wireless Division of the Wireless Telecommunications Bureau invited applicants to apply for the newly available CGSA market. See “Wireless Telecommunications

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2. The Commission's order revoking Alee's license (cellular call sign KNKN271) was implemented by letter dated May 30, 2002.³ Alee filed an application seeking review of that letter on July 1, 2002, asserting that the intervening grant of a renewal application for Station KNKN271 superseded the Commission's previous revocation of the license for the station.⁴ On August 8, 2003, the Commission denied Alee's Application for Review.⁵ Alee filed a second Request for Stay on September 26, 2003,⁶ seeking a stay of the effectiveness of the *MO&O*.

3. In its first *Stay Request*, Alee asks that the Commission "stay any further action on the Applications until such time as the Commission has acted on the Alee's [sic] pending Application for Review."⁷ The Commission denied Alee's Application for Review in the August 8, 2003 *MO&O*.⁸ In its second *Stay Request*, Alee asks the Commission to stay the effectiveness of the *MO&O* "until resolution of Alee's pending appeal to the U.S. Court of Appeals."⁹ The U.S. Court of Appeals granted summary affirmance of the *MO&O* in Alee's appeal of the *MO&O*.¹⁰ We therefore dismiss both Requests for Stay as moot.

4. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and sections 0.331 and 1.43 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.43, the Request for Stay filed by Alee Cellular Communications on August 6, 2002, IS DISMISSED as moot.

5. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and sections 0.331 and 1.43 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.43, the Request for Stay filed by Alee Cellular Communications on September 26, 2003, IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Katherine M. Harris
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

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Bureau Implements Revocation of Cellular Call Sign KNKN271 (NM3 RSA); Phase II Unserved Area Application Rules To Be Applied," *Public Notice*, 17 FCC Rcd 10518 (2002).

³ See Letter to Alee Cellular Communications from Katherine M. Harris, Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau, dated May 30, 2002 (Division Letter).

⁴ Application for Review, filed by Alee Cellular Communications, at 4 (July 1, 2002) (Application for Review).

⁵ Alee Cellular Communications Cellular Radiotelephone Station KNKN271, *Memorandum Opinion and Order*, 18 FCC Rcd 16882 (2003) (*MO&O*).

⁶ Request for Stay, filed by Alee Cellular Communications (Sept. 26, 2003) (*2003 Stay Request*).

⁷ *2002 Stay Request* at 6.

⁸ See *MO&O*, 18 FCC Rcd 16882.

⁹ *2003 Stay Request* at 7.

¹⁰ *Alee Cellular Communications v. FCC*, No. 03-1268 (D.C. Cir. Jan. 22, 2004).